

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE
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U.S. DISTRICT COURT
DISTRICT OF MASS

WEN YIH CHIANG,
Plaintiff

v.

BANK OF AMERICA, MBNA AMERICA
BANK and FIA CARD SERVICES,
Defendants

CIVIL ACTION NO.
08-11908-RWZ

**PLAINTIFF'S OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S
FIRST AMENDED COMPLAINT OR, IN THE ALTERNATIVE, FOR A MORE
DEFINITE STATEMENT, AND TO ENJOIN VEXATIOUS FILINGS**

The Defendants Bank of America, MBNA America Bank and FIA Card Services have filed a motion to dismiss the First Amended Complaint filed pro se by Plaintiff Wen Y. Chiang ("Chiang") pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, or in the alternative, for a more definite statement, and to enjoin so-called vexatious filings by Chiang.

For the reasons set forth in the memorandum of law filed herewith, the facts set forth in the Amended Complaint support claims under various theories of law. The alleged facts in the Amended Complaint supporting the negligence claim are not preempted by the Fair Credit Reporting Act ("FCRA"), defendants do owe a duty of care to all action to Chiang and the economic loss doctrine does not apply. The breach of contract claim is not defective since Chiang pleads the existence of a contract, the parties to the contract and the breach. Chiang's deceit claim should be allowed, it state the necessary "who, what, when and where.", and Chiang has all evidence and documents that the claim is sufficient, Chiang's M.G.L. Chapter 93A claim includes a paragraph (Paragraph 27) that discusses credit reporting activities. This Count of the

Amended Complaint should be amended to delete this paragraph. After such amendment, the Chapter 93A claim would not be preempted by the FCRA.

Chiang's FCRA claim alleges sufficient facts to support this claim, including an allegation that defendants received notice of Chiang's dispute from a credit reporting agency and **it is more than once of the report and the investigation is done by the credit report agencies.** Chiang agrees that his claims under the Fourth, Fifth and Seventh Amendments to the U.S. Constitution can be dismissed since these Amendments due to unclear of the government involved investment and own the shares weather or not it need to be clearly review with the 700 billion bailout act.

Defendants ridiculously request an order enjoining Chiang from filing any other actions, in state or federal courts, against defendants without first seeking this Court's prior approval. Chiang has a right to file a complaint when any entity violates state or federal law and the violation causes Chiang to suffer damages. The order requested by the defendants would violate Chiang's constitutional rights. Defendants have stated no grounds that would justify any injunctive relief against Chiang.

Wherefore, Chiang respectfully requests the Court to deny defendants' motion to dismiss, to allow Chiang to amend his amended complaint, or alternative for more definite statement. Include DENY defendants' request for injunctive relief as defendant provide no ground and false statements.

By Plaintiff,

/s/Wen Y. Chiang

WEN Y. CHIANG *Pro se*

CERTIFICATE OF SERVICE

I Wen Y. Chiang hereby certify that on this day, I served a copy of this notice to counsel for defendant's, by and through the ECF filing system.

Dated: January 4, 2009.

/s/Wen Y. Chiang

WEN Y. CHIANG *Pro se*

